IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4851 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIRANJANI COOPERATIVE HOUSING SOCIETY LTD

Versus

DAULATRAI MANIRAI PUNATAR MODEL ELECTRIC COMPANY

Appearance:

1. Special Civil Application No. 4851 of 2003

MR SHIRISH JOSHI for Petitioner No. 1

MR SANDEEP N BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 01/10/2004

ORAL JUDGEMENT

Draft amendment is allowed. The petitioner to carry out the amendment by 5th of October 2004. Rule. Shri Sandeep Bhatt, learned advocate waives service of Rule on behalf of respondent No.1. With the consent of parties, the matter is taken up for final hearing today.

2. In this petition under Article 227 of the

Constitution of India, the petitioner has challenged the legality and validity of the judgment and order dated 5.1.2002 passed by the Gujarat State Cooperative Tribunal in Appeal No. 264 of 1997 in dismissing the same and confirming the judgment and award passed by the Board of Nominees dated 2.7.1997 in Lavadh Case No. 343 of 1984. Shri Baiju Joshi, ld. advocate appearing for the petitioner has submitted that in view of the fact that the learned advocate who was appearing on behalf of the petitioner has retired and that there was no sufficient notice given to the petitioner nobody could remain present on behalf of the petitioner at the time of deciding the Lavad suit and therefore the matter had proceeded ex-parte. He has further submitted that this aspect has also not been considered and appreciated properly by the Tribunal while considering the appeal and the Tribunal has taken too technical view while dismissing the appeal and confirmed the judgment and award passed by the learned Board of Nominees. He has further submitted that instead of taking too technical view the Tribunal ought to have directed the Board of Nominees to decide and dispose of the suit on merits even by order of payment of costs to the respondents.

3. Shri Sandeep Bhatt, ld. advocate appearing on behalf of the respondent has tried to support the order passed by both the Courts below and has submitted that in fact the petitioner was having sufficient knowledge and he was aware of the fact that his Advocate had retired and the matter was adjourned. Still nobody remained present on behalf of the petitioner and therefore requested to dismiss the present petition.

4. Heard the learned advocates appearing for the parties. It is not in dispute that the learned advocate who was appearing on behalf of the petitioner has retired during the pendency of the aforesaid suit. It is the case of the petitioner that the petitioner was not having sufficient knowledge with regard to the dates and the retirement of his lawyer. It is also an admitted position that the matter had proceeded ex-parte and nobody remained present on behalf of the petitioner. Without going into the larger question and with regard to the cause for non-presence of the petitioner, if the matter is remanded to the Board of Nominees for deciding the suit afresh on merits within some time bound programme and with imposition of some costs to be paid to the respondent then it will meet the ends of justice.

5. Considering the aforesaid facts and circumstances of the case, the judgment and order passed by the Gujarat

State Cooperative Tribunal dated 5.1.2002 in Appeal No. 264 of 1997 as well as the judgment and award passed by the Board of Nominees, Rajkot dated 2.7.1997 in Lavad Case No. 343 of 1984 are hereby quashed and set aside, and the matter is remanded as stated above on condition that the pettioner shall make payment of Rs. 15,000/= to the respondent by way of costs of this petition as well as cost of earlier litigations within the period of two weeks from today.

5.1. In view of the fact that the suit is of the year 1984, the Board of Nominees, Rajkot, is directed to decide and dispose of the said suit on remand as early as possible and in any case latest by 31st January 2005 and subject to cooperation by all the parties. The learned advocates appearing on behalf of the parties have assured this Court that they will not ask for unnecessary adjounments and they will extend fullest cooperation in hearing and final disposal of the suit on or before 31st January 2005.

6. Rule is made absolute to the above extent with no order as to costs. The Office is directed to refund the amount of Rs. 5000/= deposited by the petitioner to the petitioner by an Account Payee cheque.

rmr. [M.R. Shah, J.]